

STATE OF MICHIGAN
COURT OF APPEALS

TOLICE LAWRENCE,

Plaintiff,

UNPUBLISHED
December 11, 2001

v

GROUP ADMINISTRATION AGENCY, INC.,

Defendant/Third-Party-
Plaintiff/Cross-Defendant-
Appellant,

No. 223573
Wayne Circuit Court
LC No. 97-727980-CK

and

DETROIT DISTRICT DENTAL SOCIETY,

Defendant/Third-Party-
Plaintiff/Cross-Plaintiff-Appellee,

and

LEXINGTON INSURANCE COMPANY,

Third-Party-Defendant,

and

C.M. VERBIEST & ASSOCIATES, INC.,

Cross-Defendant-Appellant.

Before: Bandstra, C.J., and Doctoroff and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree that on the record presented, the circuit court erred in granting summary disposition to DDDS. Assuming that Lawrence was entitled to recover under the plan and GAA wrongfully denied her claim, it does not follow that GAA is liable to pay the amounts found to be due. Having in mind that the plan was a self-insured plan and GAA was only the plan administrator, DDDS must further show that as a result of GAA's wrongful denial, DDDS was required to pay sums it would not otherwise have had to pay. GAA so argued to the circuit court, but the court did not address this argument. DDDS contended that but for the denial, Lexington would have covered the claim as an excess insurer. This assertion was not made until oral argument and GAA did not respond. Nor did the court cite this as a basis for its decision. While this may ultimately prove to provide a basis for recovery, the bare allegation was insufficient to support the grant of summary disposition to DDDS.

I dissent from the majority's apparent determination that indemnification is not available to DDDS because its liability to Lawrence, if any, was actively incurred. DDDS' contractual undertaking to Lawrence provides the legal basis for Lawrence's recovery, if any. It does not, however, follow that any damage incurred by DDDS has been actively incurred. I believe the relevant focus should be on DDDS' role in administering the plan, rather than its contractual undertaking. In other words, while DDDS has not shown its entitlement to summary disposition, neither has it been established on this record that recovery cannot be supported.

/s/ Helene N. White